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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, on behalf of itself and all others similarly situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, AMIN I. KHALIFA, GRANT A. BURTON, MICHAEL B. TARGOFF, JOHN D. HARKEY, ROBERT V. LaPENTA, and PRICEWATERHOUSECOOPERS, LLP, Defendants. KENT CHARMICHAEL, Individually and on behalf of all others similarly situated, Plaintiff, v. LEAP WIRELESS INTERNATIONAL, INC., *et al.*, Defendants.	LEAD CASE NO. 07-CV-2245 (BTM) (NLS) Consolidated with Case No. 08-CV-0128 (BTM) (NLS) CLASS ACTION **DEFENDANT LEAP WIRELESS INTERNATIONAL, INC.'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS THE CONSOLIDATED CLASS ACTION COMPLAINT** Hearing Date: November 21, 2008 Hearing Time: 11:00 a.m. Courtroom: 15 The Honorable Barry Ted Moskowitz, United States District Court Judge No Oral Argument Unless Requested By Court

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Evidence 201(b)(2), Defendant Leap Wireless International, Inc. ("Leap") respectfully requests that the Court take judicial notice of the following documents in support of its Motion to Dismiss the Consolidated Class Action Complaint (the "Complaint"). The documents are attached hereto as Exhibits A through S.

A. Excerpts from Leap's Form 8-K, filed with the Securities and Exchange Commission ("SEC") on November 13, 2007, including Leap's November 9, 2007 press release attached therein;

B. Excerpts from Leap's Form 10-K/A for the fiscal year ended December 31, 2006, filed with the SEC on December 26, 2007;

C. Excerpts from Leap's Form 10-Q/A for the period ending June 30, 2007, filed with the SEC on December 26, 2007;

D. Excerpts from Leap's Form 10-Q/A for the period ending March 31, 2007, filed with the SEC on December 26, 2007;

E. Excerpts from Leap's Form 10-K for the fiscal year ended December 31, 2007, filed with the SEC on February 29, 2008;

F. Excerpts from Leap's Form 10-K for the fiscal year ended December 31, 2006, filed with the SEC on March 1, 2007;

G. Excerpts from Leap's Form 10-Q for the period ending June 30, 2007, filed with the SEC on August 9, 2007;

H. Excerpts from Leap's Form 10-Q for the period ending March 31, 2007, filed with the SEC on May 10, 2007;

I. Excerpts from Leap's Form 10-Q/A for the period ending September 30, 2006, filed on December 5, 2006;

J. Excerpts from Leap's Form 10-Q for the period ending September 30, 2006, filed with the SEC on November 9, 2006;

K. Excerpts from Leap's Form 10-Q for the period ending June 30, 2006, filed with the SEC on August 8, 2006;

L. Excerpts from Leap's Form 8-K, filed with the SEC on August 7, 2007, including Leap's August 7, 2007 press release attached therein;

M. Excerpts from Leap's Form 8-K, filed with the SEC on May 8, 2007, including Leap's May 8, 2007 press release attached therein;

N. Excerpts from Leap's Form 8-K, filed with the SEC on February 27, 2007, including Leap's February 27, 2007 press release attached therein;

O. Excerpts from Leap's 8-K, filed with the SEC on November 7, 2006, including Leap's November 7, 2006 press release attached therein;

P. Excerpts from Leap's Form 8-K, filed with the SEC on August 3, 2006, including Leap's August 3, 2006 press release attached therein;

Q. Excerpts from Auditing Standard No. 5, An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements, published by the Public Company Accounting Oversight Board; and

R. Excerpts from the Statement of Financial Accounting Standards ("SFAS"), No. 154, Accounting Changes and Error Corrections, published by the Financial Accounting Standards Board.

S. Excerpts from Leap's 2006 Annual Report to Shareholders, released on or about February 28, 2007.

Judicial notice of each of these exhibits is appropriate because each exhibits is either incorporated by referenced in the Complaint or is judicially noticeable under Fed. R. Evid. 201 because it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

These documents are relevant to this Court's determination of Leap's Motion to Dismiss the Complaint, which accompanies this request for judicial notice. This request is based on this notice, the following Memorandum of Points and Authorities, the records in this case, and any further oral or written information or evidence presented prior to the Court's decision on Defendants' Motion to Dismiss the Complaint..

* * * * *

I. INTRODUCTION

This is a securities class action lawsuit against Leap Wireless International, Inc. ("Leap"), six of Leap's officers and directors, and Leap's independent outside auditor, PricewaterhouseCoopers, LLP ("PwC"). Plaintiff alleges violations of Section 10(b) and 20(a) of the Securities Exchange Act of 1934 based on alleged misrepresentations and omissions in Leap's press releases and public filings with the Securities Exchange Commission ("SEC") and in Leap's public conference calls during the alleged Class Period. Leap has filed a Motion to Dismiss Plaintiff's Consolidated Class Action Complaint ("Complaint") on the ground that it fails to plead facts sufficient to state a claim under the Private Securities Litigation Reform Act ("PSLRA") and Rules 8(a), 9(b) and 12(b)(6).

This Court is asked to take judicial notice of the following items: (1) Leap's press releases which were all filed on SEC Form 8-K; (2) Leap's quarterly and annual SEC Form 10-Q and SEC Form 10-K filings; (3) certain statements of accounting and auditing standards published by the Financial Accounting Standards Board and the Public Company Accounting Oversight Board; and (4) Leap's 2006 Annual Report to Shareholders. Leap's SEC filings, press releases and 2006 Annual Report are all expressly referenced in the Complaint and selectively quoted by Plaintiff. In addition, the accounting standards are relevant to the criteria for, and purpose of, assessing the adequacy of Plaintiff's allegations under the rigorous pleading standards established by the PSLRA, that Defendants engaged in fraudulent misrepresentation of its publicly reported financial statements and made fraudulent assessments of the effectiveness of its internal controls over financial reporting.

As set forth more fully below, judicial notice of Exhibits A through S is appropriate, and Leap's Request for Judicial Notice should be granted.

II. DISCUSSION

A. Standard for Judicial Notice

In ruling on motions to dismiss in securities cases, "courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S. Ct. 2499, 2509 (2007). Judicial notice may be taken of any adjudicative fact that is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

Courts routinely take judicial notice of documents that are publicly available and referenced in the complaint, particularly SEC filings. *See, e.g., Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994) (overruled on other grounds) (documents whose contents are alleged in a complaint and whose authenticity no party questions are properly considered in ruling on a 12(b)(6) motion without converting it to a motion for summary judgment); *Fecht v. Price Co.*, 70 F.3d 1078, 1080, n.1 (9th Cir. 1995) (the full text of documents relied upon in a complaint alleging securities fraud may be considered on a motion to dismiss for failure to state a claim); *Kramer v. Time Warner, Inc.*, 937 F.2d 767 (2d Cir. 1991) (court may properly take judicial notice of SEC filings on a motion to dismiss); *In re Silicon Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (taking judicial notice of SEC Form 4 filings); *Cummings v. Koninklijke Philips Elecs.*, 2002 U.S. Dist. LEXIS 23383, *10 (N.D. Cal. Nov. 25, 2002) (taking judicial notice of SEC proxy filings).

The strong congressional policies in the PSLRA (15 U.S.C. § 78u-4) underscore the need for courts to take judicial notice of readily ascertainable corporate disclosures in considering motions to dismiss. The PSLRA was prompted by "significant evidence of abuse in private securities lawsuits." H.R. Conf. Rep. No. 104-369, 104th Cong., 2d Sess. ¶ 301 (Nov. 28, 1995). Congress chose reforms designed to weed out speculative securities suits *at the pleading stage*. Accordingly, when investors claim "fraud" on the basis of alleged omissions and misrepresentations in publicly available documents, courts must take judicial notice of those documents. Otherwise, a plaintiff bringing a meritless claim could easily overcome a motion to dismiss and gain the right to engage in extensive discovery simply by selectively choosing portions of the defendant's public statements out of context. *See Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998) (plaintiff cannot survive a motion to dismiss by omitting references to documents upon which their claims were based); *Trew v. International Game Fish Ass'n, Inc.*, 404 F. Supp. 2d 1173, 1176 n.2 (N.D. Cal. 2005) (when a complaint expressly refers to a document, the court may consider that document in a motion to dismiss without converting it to a motion for summary judgment). The PSLRA was intended to prevent such abusive securities litigation practices by raising the bar for plaintiffs.

B. The Court Should Judicially Notice Exhibits A through S.

1. Leap's Press Releases

Leap requests that the Court take judicial notice of Leap's press releases (Exhibits A and L through P), which were filed with the SEC on Form 8-K. In the Complaint, Plaintiff quotes extensively, but selectively from each of these press releases. *See* Compl. ¶¶ 74, 83, 96, 117, 129, 134. Under the incorporation by reference doctrine, a district court, when adjudicating a motion to dismiss, may consider documents outside the complaint "[i]f plaintiff fails to attach to the complaint the documents on which it is based." *See In re Pacific Gateway Exchange, Inc.*, 169 Supp. 2d 1160, 1164 (N.D. Cal. 2001) (citation omitted); *Tellabs*, 127 S. Ct. at 2509. Moreover, as discussed below, judicial notice of documents filed with the SEC is appropriate under Federal Rule of Evidence 201(b)(2). *Kramer*, 937 F.2d at 774.

2. Leap's Filings with the Securities and Exchange Commission

Leap requests that the Court take judicial notice of Exhibits B through K which consist of Leap's quarterly and annual SEC Form 10-Q and SEC Form 10-K filings. Leap offers excerpts, rather than complete filings, to avoid burdening the Court with unrelated discussion and information, and to focus attention on the relevant portions of the filings that concern the matters alleged in the Complaint. The complete filings are readily available on the internet and can be accessed directly from the SEC's website at http://www.sec.gov or through Leap's website, at http://www.leapwireless.com.

In the Complaint, Plaintiff references and selectively quotes from Leap's SEC filings. *See, e.g.,* Compl. ¶¶ 77, 79, 81, 101. It is proper for the Court to take judicial notice of Leap's SEC filings for two reasons. First, as the authority set forth above makes clear, courts routinely take judicial notice of documents filed with the SEC when relevant to the allegations of misrepresentations, as alleged here. Second, it is proper for the Court to judicially notice these exhibits under the doctrine of incorporation by reference. *See Pacific Gateway Exchange,* 169 Supp. 2d at 1164.

3. Leap's 2006 Annual Report to Shareholders

Leap requests that the Court take judicial notice of Exhibit S, Leap's 2006 Annual Report to Shareholders. In the Complaint, Plaintiff quotes certain selected portions of the Annual Report. *See* Compl. ¶¶ 105, 107, 109. Under the incorporation by reference doctrine, a district court, when adjudicating a motion to dismiss, may consider documents outside the complaint "[i]f plaintiff fails to attach to the complaint the documents on which it is based." *See Pacific Gateway Exchange,* 169 Supp. 2d at 1164; *Tellabs*, 127 S. Ct. at 2509. Further, Leap's 2006 Annual Report is readily available on Leap's website, at http://www.leapwireless.com, and its contents are not subject to reasonable dispute. It is appropriate for this Court to take judicial notice of Exhibit S pursuant to Fed. R. Evid. 201.

4. Accounting Standards

Leap requests that the Court take judicial notice of Exhibits Q and R which consists of relevant excerpts from the Statement of Financial Accounting Standards ("SFAS") No. 154 and the PCAOB Auditing Standard ("AS") No. 5. The central claims and allegations in the Complaint concern Leap's financial restatement of its financial results for the years 2004, 2005, 2006, and the first two quarters of 2007, as well as Leap's alleged failure to disclose material weaknesses in its internal controls. Compl. ¶¶ 6-14. Restatements are governed by GAAP and, specifically, by SFAS No. 154, which sets out requirements regarding reporting of accounting changes and correction of errors. SFAS No. 154 is relevant to the criteria for, and purpose of, a restatement to correct Leap's historical accounting errors. In addition, AS No. 5 sets out the standards and relevant definitions for a company and its auditor to evaluate the effectiveness of its internal controls and the existence of "material weaknesses," a term of art defined by AS No. 5.

Such accounting standards are often cited by courts and parties in cases involving alleged GAAP violations. *See, e.g., In re CNET Networks, Inc.*, 483 F. Supp. 2d 947, 955 (N.D. Cal. 2007) (discussing GAAP for stock option accounting under APB 25); *In re Zoran Corp.*

Derivative Litig., 511 F. Supp. 2d 986, 1003 (N.D. Cal. 2007) (same); *In re FVC.COM Sec. Litig.*, 32 Fed. App. 338, 341 (9th Cir. 2002) (discussing APB 20 and SFAS 48 in connection with analysis of alleged misapplication of GAAP); *In re Commtouch Software Ltd.*, 2002 U.S. Dist. LEXIS 13742, at *22-25 (N.D. Cal. 2002) (discussing and interpreting APB 20 regarding restatements); *Payne v. Deluca*, 433 F. Supp. 2d 547, 577 (W.D. Pa. 2006) (same).

Because SFAS No. 154 and AS No. 5 are both readily ascertainable and their contents are not subject to reasonable dispute, it is appropriate for this Court to take judicial notice of Exhibits Q and R pursuant to Fed. R. Evid. 201.

III. CONCLUSION

For the foregoing reasons, Leap respectfully requests that the Court take judicial notice of Exhibits A through S.

Dated: August 28, 2008

Respectfully submitted,

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By /s/ Pamela S. Palmer
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INDEX OF EXHIBITS TO LEAP'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS

EXHIBIT	DESCRIPTION
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